

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

DAVID GARCIA
4576 Vista Street
San Diego, CA 92116

Registered Nurse License No. 443781
Nurse Practitioner Certificate No. 9111
Nurse Practitioner Furnishing No. 9111

Respondent

Case No. 2009-27

OAH No. L-2008110135

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on July 10, 2009.

IT IS SO ORDERED June 10, 2009.

Susanne Phillips, MSN, RN, FNP-BC

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

3 RITA M. LANE, State Bar No. 171352
Deputy Attorney General

4 110 West "A" Street, Suite 1100
San Diego, CA 92101

5 P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 645-2614
7 Facsimile: (619) 645-2061

8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

13 DAVID GARCIA
14 4576 Vista Street
San Diego, CA 92116

15 Registered Nurse License No. 443781
16 Nurse Practitioner Certificate No. 9111
Nurse Practitioner Furnishing No. 9111

17 Respondent.

Case No. 2009-27

OAH No. L-2008110135

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
20 above-entitled proceedings that the following matters are true:

21 PARTIES

22 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
23 the Board of Registered Nursing. She brought this action solely in her official capacity and is
24 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
25 by Rita M. Lane, Deputy Attorney General.

26 2. Respondent David Garcia is represented in this proceeding by attorney
27 Peter R. Osinoff, Esq., whose address is 3699 Wilshire Boulevard, 10th Floor
28 Los Angeles, CA 90010-2719.

1 **Registered Nurse License**

2 3. On or about August 31, 1989, the Board of Registered Nursing (Board)
3 issued Registered Nurse License No. 443781 to David Garcia ("Respondent"). The Registered
4 Nurse License was in full force and effect at all times relevant to the charges brought in
5 Accusation No. 2009-27 and will expire on July 31, 2009, unless renewed.

6 **Nurse Practitioner Certificate No. 9111**

7 4. On or about June 16, 1997, the Board issued Nurse Practitioner Certificate
8 No. 9111 to Respondent. Respondent's nurse practitioner certificate was in full force and effect
9 at all times relevant to the charges brought in Accusation No. 2009-27 and will expire on July 31,
10 2009, unless renewed.

11 **Nurse Practitioner Furnishing Certificate No. 9111**

12 5. On or about April 10, 2001, the Board issued Nurse Practitioner
13 Furnishing Certificate No. 9111 to Respondent. Respondent's nurse practitioner furnishing
14 certification was in full force and effect at all times relevant to the charges brought in Accusation
15 No. 2009-27 and will expire on July 31, 2009, unless renewed.

16 **JURISDICTION**

17 6. Accusation No. 2009-27 was filed before the Board, Department of
18 Consumer Affairs, and is currently pending against Respondent. The Accusation and all other
19 statutorily required documents were properly served on Respondent on August 8, 2008.
20 Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation
21 No. 2009-27 is attached as Exhibit A and incorporated herein by reference.

22 **ADVISEMENT AND WAIVERS**

23 7. Respondent has carefully read, fully discussed with counsel, and
24 understands the charges and allegations in Accusation No. 2009-27. Respondent has also
25 carefully read, fully discussed with counsel, and understands the effects of this Stipulated
26 Settlement and Disciplinary Order.

27 8. Respondent is fully aware of his legal rights in this matter, including the
28 right to a hearing on the charges and allegations in the Accusation; the right to confront and

1 cross-examine the witnesses against him; the right to present evidence and to testify on his own
2 behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the
3 production of documents; the right to reconsideration and court review of an adverse decision;
4 and all other rights accorded by the California Administrative Procedure Act and other applicable
5 laws.

6 9. Respondent voluntarily, knowingly, and intelligently waives and gives up
7 each and every right set forth above.

8 CULPABILITY

9 10. Respondent admits the truth of each and every charge and allegation in
10 Accusation No. 2009-27 with the exception of paragraph 20, the First Cause for Discipline.

11 11. Respondent agrees that his Registered Nurse License, Nurse Practitioner
12 Certificate and Nurse Practitioner Furnishing number are subject to discipline and he agrees to be
13 bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

14 CONTINGENCY

15 12. This stipulation shall be subject to approval by the Board. Respondent
16 understands and agrees that counsel for Complainant and the staff of the Board may
17 communicate directly with the Board regarding this stipulation and settlement, without notice to
18 or participation by Respondent or his counsel. By signing the stipulation, Respondent
19 understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation
20 prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation
21 as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force
22 or effect, except for this paragraph, it shall be inadmissible in any legal action between the
23 parties, and the Board shall not be disqualified from further action by having considered this
24 matter.

25 13. The parties understand and agree that facsimile copies of this Stipulated
26 Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same
27 force and effect as the originals.

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1 14. In consideration of the foregoing admissions and stipulations, the parties
2 agree that the Board may, without further notice or formal proceeding, issue and enter the
3 following Disciplinary Order:

4 **DISCIPLINARY ORDER**

5 IT IS HEREBY ORDERED that Registered Nurse License No. 443781, Nurse
6 Practitioner Certificate No. 9111, and Nurse Practitioner Furnishing No. 9111 issued to
7 Respondent David Garcia are revoked. However, the revocations are stayed and Respondent is
8 placed on probation for three (3) years on the following terms and conditions.

9 **Severability Clause.** Each condition of probation contained herein is a separate
10 and distinct condition. If any condition of this Order, or any application thereof, is declared
11 unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other
12 applications thereof, shall not be affected. Each condition of this Order shall separately be valid
13 and enforceable to the fullest extent permitted by law.

14 1. **Obey All Laws.** Respondent shall obey all federal, state and local laws.
15 A full and detailed account of any and all violations of law shall be reported by Respondent to
16 the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of
17 compliance with this condition, Respondent shall submit completed fingerprint forms and
18 fingerprint fees within 45 days of the effective date of the decision, unless previously submitted
19 as part of the licensure application process.

20 **Criminal Court Orders:** If Respondent is under criminal court orders, including
21 probation or parole, and the order is violated, this shall be deemed a violation of these probation
22 conditions, and may result in the filing of an accusation and/or petition to revoke probation.

23 2. **Comply with the Board's Probation Program.** Respondent shall fully
24 comply with the conditions of the Probation Program established by the Board and cooperate
25 with representatives of the Board in its monitoring and investigation of the Respondent's
26 compliance with the Board's Probation Program. Respondent shall inform the Board in writing
27 within no more than 15 days of any address change and shall at all times maintain an active,
28 current license status with the Board, including during any period of suspension.

1 Upon successful completion of probation, Respondent's license shall be fully
2 restored.

3 3. **Report in Person.** Respondent, during the period of probation, shall
4 appear in person at interviews/meetings as directed by the Board or its designated
5 representatives.

6 4. **Residency, Practice, or Licensure Outside of State.** Periods of
7 residency or practice as a registered nurse outside of California shall not apply toward a reduction
8 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
9 California. Respondent must provide written notice to the Board within 15 days of any change of
10 residency or practice outside the state, and within 30 days prior to re-establishing residency or
11 returning to practice in this state.

12 Respondent shall provide a list of all states and territories where he has ever been
13 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
14 provide information regarding the status of each license and any changes in such license status
15 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
16 new nursing license during the term of probation.

17 5. **Submit Written Reports.** Respondent, during the period of probation,
18 shall submit or cause to be submitted such written reports/declarations and verification of actions
19 under penalty of perjury, as required by the Board. These reports/declarations shall contain
20 statements relative to Respondent's compliance with all the conditions of the Board's Probation
21 Program. Respondent shall immediately execute all release of information forms as may be
22 required by the Board or its representatives.

23 Respondent shall provide a copy of this Decision to the nursing regulatory agency
24 in every state and territory in which he has a registered nurse license.

25 6. **Function as a Registered Nurse.** Respondent, during the period of
26 probation, shall engage in the practice of registered nursing in California for a minimum of 24
27 hours per week for 6 consecutive months or as determined by the Board.

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1 For purposes of compliance with the section, "engage in the practice of registered
2 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
3 work in any non-direct patient care position that requires licensure as a registered nurse.

4 The Board may require that advanced practice nurses engage in advanced practice
5 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
6 Board.

7 If Respondent has not complied with this condition during the probationary term,
8 and Respondent has presented sufficient documentation of his good faith efforts to comply with
9 this condition, and if no other conditions have been violated, the Board, in its discretion, may
10 grant an extension of Respondent's probation period up to one year without further hearing in
11 order to comply with this condition. During the one year extension, all original conditions of
12 probation shall apply.

13 7. **Employment Approval and Reporting Requirements.** Respondent
14 shall obtain prior approval from the Board before commencing or continuing any employment,
15 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
16 performance evaluations and other employment related reports as a registered nurse upon request
17 of the Board.

18 Respondent shall provide a copy of this Decision to his employer and immediate
19 supervisors prior to commencement of any nursing or other health care related employment.

20 In addition to the above, Respondent shall notify the Board in writing within
21 seventy-two (72) hours after he obtains any nursing or other health care related employment.
22 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
23 or separated, regardless of cause, from any nursing, or other health care related employment with
24 a full explanation of the circumstances surrounding the termination or separation.

25 8. **Supervision.** Respondent shall obtain prior approval from the Board
26 regarding Respondent's level of supervision and/or collaboration before commencing or
27 continuing any employment as a registered nurse, or education and training that includes patient
28 care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. Employment Limitations. Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

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1 Respondent shall not work in any health care setting as a supervisor of registered
2 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
3 nurses and/or unlicensed assistive personnel on a case-by-case basis.

4 Respondent shall not work as a faculty member in an approved school of nursing
5 or as an instructor in a Board approved continuing education program.

6 Respondent shall work only on a regularly assigned, identified and predetermined
7 worksite(s) and shall not work in a float capacity.

8 If Respondent is working or intends to work in excess of 40 hours per week, the
9 Board may request documentation to determine whether there should be restrictions on the hours
10 of work.

11 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
12 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
13 than six months prior to the end of his probationary term.

14 Respondent shall obtain prior approval from the Board before enrolling in the
15 course(s). Respondent shall submit to the Board the original transcripts or certificates of
16 completion for the above required course(s). The Board shall return the original documents to
17 Respondent after photocopying them for its records.

18 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
19 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
20 reduced amount of \$4,900. Respondent shall be permitted to pay these costs in a payment plan
21 approved by the Board, with payments to be completed no later than three months prior to the
22 end of the probation term.

23 If Respondent has not complied with this condition during the probationary term,
24 and Respondent has presented sufficient documentation of his good faith efforts to comply with
25 this condition, and if no other conditions have been violated, the Board, in its discretion, may
26 grant an extension of Respondent's probation period up to one year without further hearing in
27 order to comply with this condition. During the one year extension, all original conditions of
28 probation will apply.

1 12. **Violation of Probation.** If Respondent violates the conditions of his
2 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
3 aside the stay order and impose the stayed discipline (revocation) of Respondent's license.

4 If during the period of probation, an accusation or petition to revoke probation has
5 been filed against Respondent's license or the Attorney General's Office has been requested to
6 prepare an accusation or petition to revoke probation against Respondent's license, the
7 probationary period shall automatically be extended and shall not expire until the accusation or
8 petition has been acted upon by the Board.

9 13. **License Surrender.** During Respondent's term of probation, if he ceases
10 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
11 probation, Respondent may surrender his license to the Board. The Board reserves the right to
12 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
13 take any other action deemed appropriate and reasonable under the circumstances, without
14 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
15 will no longer be subject to the conditions of probation.

16 Surrender of Respondent's license shall be considered a disciplinary action and
17 shall become a part of Respondent's license history with the Board. A registered nurse whose
18 license has been surrendered may petition the Board for reinstatement no sooner than the
19 following minimum periods from the effective date of the disciplinary decision:

20 (1) Two years for reinstatement of a license that was surrendered for any
21 reason other than a mental or physical illness; or

22 (2) One year for a license surrendered for a mental or physical illness.

23 ACCEPTANCE

24 I have carefully read the above Stipulated Settlement and Disciplinary Order and
25 have fully discussed it with my attorney, Peter R. Osinoff, Esq. I understand the stipulation and
26 the effect it will have on my Registered Nurse License, Nurse Practitioner Certificate and Nurse
27 Practitioner Furnishing Certificate. I enter into this Stipulated Settlement and Disciplinary Order

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1 voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the
2 Board of Registered Nursing.

3 DATED: 12/23/08.

4
5 
6 DAVID GARCIA
Respondent

7
8 I have read and fully discussed with Respondent David Garcia the terms and
9 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
10 Order. I approve its form and content.

11 DATED: 12/29/08.

12
13 
14 PETER R. OSINOFF, ESQ.
Attorney for Respondent

15
16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Registered Nursing of the Department of Consumer
19 Affairs.

20 DATED: 1-16-09

21 EDMUND G. BROWN JR., Attorney General
of the State of California

22 LINDA K. SCHNEIDER
23 Supervising Deputy Attorney General

24 
25 RITA M. LANE
26 Deputy Attorney General

27 Attorneys for Complainant

Exhibit A
Accusation No. 2009-27

1 EDMUND G. BROWN JR., Attorney General
of the State of California

2 LINDA K. SCHNEIDER
Supervising Deputy Attorney General

3 RITA M. LANE, State Bar No. 171352
Supervising Deputy Attorney General

4 110 West "A" Street, Suite 1100
San Diego, CA 92101

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9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2009-27

13 **DAVID GARCIA**
14 4576 Vista Street
San Diego, CA 92116

A C C U S A T I O N

15 Registered Nurse License No. 443781
16 Nurse Practitioner Certificate No. 9111
Nurse Practitioner Furnishing No. 9111

17 Respondent.

18
19 Complainant alleges:

20 **PARTIES**

21 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
22 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
23 ("Board"), Department of Consumer Affairs.

24 **Registered Nurse License**

25 2. On or about August 31, 1989, the Board issued Registered Nurse License
26 No. 443781 to David Garcia ("Respondent"). The registered nurse license will expire on July 31,
27 2009, unless renewed.

28 ///

1 **Nurse Practitioner Certificate No. 9111**

2 3. On or about June 16, 1997, the Board issued Nurse Practitioner Certificate
3 No. 9111 to Respondent. Respondent's nurse practitioner certificate was in full force and effect
4 at all times relevant to the charges brought herein and will expire on July 31, 2009, unless
5 renewed.

6 **Nurse Practitioner Furnishing Certificate No. 9111**

7 4. On or about April 10, 2001, the Board issued Nurse Practitioner
8 Furnishing Certificate No. 9111⁴ to Respondent. Respondent's nurse practitioner furnishing
9 certification was in full force and effect at all times relevant to the charges brought herein and
10 will expire on July 31, 2009, unless renewed.

11 **STATUTORY PROVISIONS**

12 5. Business and Professions Code ("Code") section 2750 provides, in
13 pertinent part, that the Board may discipline any licensee, including a licensee holding a
14 temporary or an inactive license, for any reason provided in Article 3 (commencing with Code
15 section 2750) of the Nursing Practice Act.

16 6. Code section 2725 states, in pertinent part:

17

18 (b) The practice of nursing within the meaning of this chapter means
19 those functions, including basic health care, that help people cope with difficulties
20 in daily living that are associated with their actual or potential health or illness
21 problems or the treatment thereof, and that require a substantial amount of
22 scientific knowledge or technical skill, including all of the following:

23 (1) Direct and indirect patient care services that ensure the safety,
24 comfort, personal hygiene, and protection of patients; and the performance of
25 disease prevention and restorative measures.

26 (2) Direct and indirect patient care services, including, but not limited
27 to, the administration of medications and therapeutic agents, necessary to
28 implement a treatment, disease prevention, or rehabilitative regimen ordered by
29 and within the scope of licensure of a physician, dentist, podiatrist, or clinical
30 psychologist, as defined by Section 1316.5 of the Health and Safety Code.

31 (4) Observation of signs and symptoms of illness, reactions to
32 treatment, general behavior, or general physical condition, and (A) determination
33 of whether the signs, symptoms, reactions, behavior, or general appearance exhibit

1 abnormal characteristics, and (B) implementation, based on observed
2 abnormalities, of appropriate reporting, or referral, or standardized procedures, or
3 changes in treatment regimen in accordance with standardized procedures, or the
4 initiation of emergency procedures.

5 (c) "Standardized procedures," as used in this section, means either of
6 the following:

7 (1) Policies and protocols developed by a health facility licensed
8 pursuant to Chapter 2 (commencing with Section 1250) of Division 2 of the
9 Health and Safety Code through collaboration among administrators and health
10 professionals including physicians and nurses.

11 (2) Policies and protocols developed through collaboration among
12 administrators and health professionals, including physicians and nurses, by an
13 organized health care system which is not a health facility licensed pursuant to
14 Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety
15 Code.

16 The policies and protocols shall be subject to any guidelines for
17 standardized procedures that the Division of Licensing of the Medical Board of
18 California and the Board of Registered Nursing may jointly promulgate. If
19 promulgated, the guidelines shall be administered by the Board of Registered
20 Nursing.

21 (d) Nothing in this section shall be construed to require approval of
22 standardized procedures by the Division of Licensing of the Medical Board of
23 California, or by the Board of Registered Nursing.

24 (e) No state agency other than the board may define or interpret the
25 practice of nursing for those licensed pursuant to the provisions of this chapter, or
26 develop standardized procedures or protocols pursuant to this chapter, unless so
27 authorized by this chapter, or specifically required under state or federal statute.
28 "State agency" includes every state office, officer, department, division, bureau,
board, authority, and commission.

7. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse
or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the
following:

(1) Incompetence, or gross negligence in carrying out usual certified or
licensed nursing functions.

8. Code section 2764 provides, in pertinent part, that the expiration of a
license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding
against the licensee or to render a decision imposing discipline on the license. Under Code

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1 section 2811, subdivision (b), the Board may renew an expired license at any time within eight
2 years after the expiration.

3 REGULATORY PROVISIONS

4 9. California Code of Regulations, title 16, section ("Regulation") 1442
5 states:

6 As used in Section 2761 of the code, 'gross negligence' includes an
7 extreme departure from the standard of care which, under similar circumstances,
8 would have ordinarily been exercised by a competent registered nurse. Such an
9 extreme departure means the repeated failure to provide nursing care as required
or failure to provide care or to exercise ordinary precaution in a single situation
which the nurse knew, or should have known, could have jeopardized the client's
health or life.

10 10. Regulation section 1443 states:

11 As used in Section 2761 of the code, 'incompetence' means the lack of
12 possession of or the failure to exercise that degree of learning, skill, care and
13 experience ordinarily possessed and exercised by a competent registered nurse as
described in Section 1443.5.

14 11. Regulation section 1443.5 states:

15 A registered nurse shall be considered to be competent when he/she
16 consistently demonstrates the ability to transfer scientific knowledge from social,
biological and physical sciences in applying the nursing process, as follows:

17 (1) Formulates a nursing diagnosis through observation of the client's
18 physical condition and behavior, and through interpretation of information
obtained from the client and others, including the health team.

19 (2) Formulates a care plan, in collaboration with the client, which
20 ensures that direct and indirect nursing care services provide for the client's safety,
21 comfort, hygiene, and protection, and for disease prevention and restorative
measures.

22 (3) Performs skills essential to the kind of nursing action to be taken,
23 explains the health treatment to the client and family and teaches the client and
family how to care for the client's health needs.

24 (4) Delegates tasks to subordinates based on the legal scopes of
25 practice of the subordinates and on the preparation and capability needed in the
tasks to be delegated, and effectively supervises nursing care being given by
subordinates.

26 (5) Evaluates the effectiveness of the care plan through observation of
27 the client's physical condition and behavior, signs and symptoms of illness, and
28 reactions to treatment and through communication with the client and health team
members, and modifies the plan as needed.

(6) Acts as the client's advocate, as circumstances require, by initiating action to improve health care or to change decisions or activities which are against the interests or wishes of the client, and by giving the client the opportunity to make informed decisions about health care before it is provided.

COST RECOVERY

12. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

BACKGROUND

13. At all times herein mentioned, Respondent was employed as a Cardiothoracic Surgery Nurse Practitioner at Thornton Hospital, University of California, San Diego Medical Center ("UCSD"), in the cardiothoracic unit in San Diego, California.

14. On or about March 15, 2003, Patient A was admitted to UCSD for by-pass surgery. In preparation for the surgery, Patient A had been instructed to suspend his practice of taking aspirin daily.

15. In or around 2003 pursuant to U.C.S.D.'s *Standardized Procedure Guidelines for the Cardiothoracic Surgery Nurse Practitioner* it was standard practice in the cardiothoracic unit at UCSD to put post-operative bypass patients on aspirin therapy if they did not show contraindication to aspirin. Patient A had not shown a contraindication to aspirin, and Patient A resumed aspirin therapy one day after the surgery.

16. On or about March 18, 2003, while on duty at UCSD, Respondent reviewed discharge instructions and orders with Patient A and Patient A's wife.¹ Respondent completed a discharge form that same day. On March 19, 2003, Respondent dictated Patient A's discharge summary. Respondent did not document any instructions or order regarding Patient

/// 24084700
REGISTERED 4062140

1. UCSD's *Standardized Procedure Guidelines for the Cardiothoracic Surgery Nurse Practitioner*, p. 34, states, in pertinent part, that "The discharge medications must be clearly discussed with the patient, that the patient must understand what medicines they should be taking, why they are taking them and when they should be taken. . . . Especially important is that patients understand their anticoagulation regimen. . . ."

1 A's resumption of pre-operative medications, including aspirin, on the discharge form, in his
2 notes, or in his discharge summary for Patient A, contrary to UCSD's policies and procedures,²

3 17. Patient A's *Patient's Self-Care Discharge Instructions*, transcribed from
4 Respondent's documentation, which were given to Patient A when he was discharged on
5 March 19, 2003, did not include an instruction for Patient A to resume his pre-operative
6 medications, including aspirin.

7 18. On March 25, 2003, Patient A was readmitted to UCSD. Patient A's wife
8 told Respondent that day that she had been told Patient A suffered a stroke because he
9 discontinued taking aspirin after he was discharged from UCSD on March 19, 2003.

10 19. On or about April 3, 2003, Respondent changed the March 19, 2003,
11 discharge summary that he had dictated for Patient A, to add that he had instructed Patient A to
12 resume pre-operative medications, including aspirin.

13 FIRST CAUSE FOR DISCIPLINE

14 (Incompetence)

15 20. Respondent is subject to disciplinary action pursuant to Code section
16 2761, subdivision (a)(1), on the grounds of unprofessional conduct, in that between March 18,
17 2003, and April 3, 2003, while on duty as a licensed nurse practitioner at UCSD, Respondent was
18 guilty of incompetence as set forth above in paragraphs 13 to 19, within the meaning of
19 Regulation 1443, as follows:

20 a. In preparation for Patient A's discharge from UCSD, on March 19, 2003,
21 Respondent failed to properly instruct and ensure that Patient A or his family members knew
22 what medications to take, when to take them, and what the medications were for, including the
23 need to resume taking aspirin.

24 b. Between March 18, 2003, and March 19, 2003, Respondent failed to
25 appropriately, accurately, or timely document discharge instructions regarding Patient A.

26
27 2. UCSD's *Standardized Procedure Guidelines for the Cardiothoracic Surgery Nurse Practitioner*, p. 35,
28 states, in pertinent part, "[D]ischarge summaries need to be very thorough and precise, and specific information
regarding the patients' . . . post operative course . . . should be included."

1 c. On or about April 3, 2003, Respondent inappropriately altered Patient A's
2 medical chart by changing the discharge summary to add that Respondent had instructed Patient
3 A to resume pre-operative medications, including aspirin.

4 **SECOND CAUSE FOR DISCIPLINE**

5 **(Unprofessional Conduct)**

6 21. Respondent is subject to disciplinary action pursuant to Code section
7 2761, subdivision (a), in that between March 18, 2003 and April 3, 2003, while on duty as a
8 licensed nurse practitioner at UCSD, Respondent committed acts constituting unprofessional
9 conduct, as set forth in paragraph 20, subparagraphs a, b and c, above.

10 **PRAYER**


11 **WHEREFORE**, Complainant requests that a hearing be held on the matters
12 herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

- 13 1. Revoking or suspending Registered Nurse License No. 443781, issued to
14 David Garcia;
15 2. Revoking or suspending Nurse Practitioner Certification No. 9111, issued
16 to David Garcia;
17 3. Revoking or suspending Nurse Practitioner Furnishing Certification
18 No. 9111, issued to David Garcia;
19 4. Ordering David Garcia to pay the Board of Registered Nursing the
20 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
21 Professions Code section 125.3; and

22 5. Taking such other and further action as deemed necessary and proper.

23 DATED: 7/31/08

24
25 2V08VHEK10
REGISTERED 10/30/08


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant